

Exhibit 35

Deposition of Paul Oyer (November 29,
2017) (excerpted)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)	
FITCH, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:15-cv-01045-RFB-(PAL)
)	
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	
)	
Defendant.)	
_____)	

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VIDEOTAPED DEPOSITION OF PAUL OYER

Washington, D.C.

November 29, 2017

8:36 a.m.

REPORTED BY:
Tina Alfaro, RPR, CRR, RMR
Job No: 52564

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<p style="text-align: right;">98</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 you do not need to answer questions -- and correct</p> <p>3 me if you disagree -- about actual communication</p> <p>4 with the -- that went into your preparing your</p> <p>5 report.</p> <p>6 MR. DAVIS: I guess with the -- we can see</p> <p>7 if we disagree, but with -- well, why don't we start</p> <p>8 with that --</p> <p>9 MR. WIDNELL: Yeah.</p> <p>10 MR. DAVIS: -- and then we can move on to</p> <p>11 what --</p> <p>12 MR. WIDNELL: There may just be nuances.</p> <p>13 That's sort of a general overview.</p> <p>14 MR. DAVIS: Fair enough.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I believe I skimmed a copy of Topel's</p> <p>17 report after I had drafted my own report.</p> <p>18 Q. You skimmed it after you drafted your own</p> <p>19 report?</p> <p>20 A. Correct.</p> <p>21 Q. And do you know whether it was the final</p> <p>22 version of the Topel report or a draft of the Topel</p> <p>23 report?</p> <p>24 A. I would imagine it was a draft, but I don't</p> <p>25 know for sure.</p>	<p style="text-align: right;">100</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 the stipulation not to specifically address the back</p> <p>3 and forth that you had with -- with outside counsel</p> <p>4 in preparing.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Okay. So I think I can pretty safely</p> <p>7 address that by just saying that the court documents</p> <p>8 were provided to me.</p> <p>9 Q. Did you select them from a list made</p> <p>10 available, or did -- did you simply receive them and</p> <p>11 then review them once you'd received them?</p> <p>12 A. Oh, I -- I selected -- I said I want this,</p> <p>13 this, and this.</p> <p>14 Q. What were you given that allowed you to</p> <p>15 select them? What list did you receive?</p> <p>16 A. My decisions were mostly based on</p> <p>17 reading -- reading the two expert reports that I was</p> <p>18 asked to comment on and the complaint.</p> <p>19 Q. Okay.</p> <p>20 MR. WIDNELL: Are you asking for a</p> <p>21 description of the list that he would have gotten</p> <p>22 from us?</p> <p>23 MR. DAVIS: Just the nature of whether it</p> <p>24 was a curated list or the full list of the documents</p> <p>25 in the case.</p>
<p style="text-align: right;">99</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you communicate with any of the other</p> <p>3 experts retained about the substance of your report</p> <p>4 or of theirs?</p> <p>5 A. No.</p> <p>6 Q. And you say you reviewed the Topel report</p> <p>7 only after you'd completed yours?</p> <p>8 A. After I had drafted my own report.</p> <p>9 Q. After you drafted your own report. Did you</p> <p>10 rely on anything in that report in your report?</p> <p>11 A. I did not.</p> <p>12 Q. You list materials on which you relied on</p> <p>13 pages 26 and 27 of your report. Did you review any</p> <p>14 other materials on which you relied in your report?</p> <p>15 A. No, I don't think so.</p> <p>16 Q. Did you speak with any Zuffa employees or</p> <p>17 executives in preparing your report?</p> <p>18 A. No.</p> <p>19 Q. Did you speak to any MMA fighters in</p> <p>20 preparing your report?</p> <p>21 A. No.</p> <p>22 Q. Are you familiar with an article -- before</p> <p>23 we change subjects, how did you obtain the materials</p> <p>24 on which you relied in preparing your report?</p> <p>25 MR. WIDNELL: I'm going to instruct you per</p>	<p style="text-align: right;">101</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 MR. WIDNELL: That's a description, right?</p> <p>3 MR. DAVIS: Yes.</p> <p>4 MR. WIDNELL: I think that's not covered by</p> <p>5 the stipulation.</p> <p>6 MR. CRAMER: He was moving on.</p> <p>7 MR. WIDNELL: Okay. Just to be clear,</p> <p>8 though.</p> <p>9 MR. DAVIS: Right. When you say "not</p> <p>10 covered by the stipulation" --</p> <p>11 MR. WIDNELL: Well, it would be helpful for</p> <p>12 us to know because we'll have the same level of</p> <p>13 questioning for your experts. So are you taking the</p> <p>14 position that you can ask for an actual description</p> <p>15 of the kind of information that was provided as a</p> <p>16 sort of menu to the experts?</p> <p>17 MR. CRAMER: If the expert relies upon it,</p> <p>18 then the answer is yes.</p> <p>19 MR. WIDNELL: Only if the expert relies</p> <p>20 upon it.</p> <p>21 MR. CRAMER: (inaudible)</p> <p>22 MR. WIDNELL: So you weren't asking for</p> <p>23 information about stuff that Professor Oyer did not</p> <p>24 rely on, is that right, just to be clear?</p> <p>25 MR. DAVIS: I guess what I'd say, since</p>

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<p style="text-align: right;">102</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 we're moving on --</p> <p>3 MR. WIDNELL: Well, the nature of the</p> <p>4 questions you asked, I just want to make sure we're</p> <p>5 all on the same page, that you're not going to be</p> <p>6 using what's in any of his responses to suggest</p> <p>7 that -- that he either did or did not fully consider</p> <p>8 something based off of the questions you asked about</p> <p>9 what we provided him.</p> <p>10 MR. DAVIS: Well, I guess -- I think this</p> <p>11 is a conversation best --</p> <p>12 MR. WIDNELL: We can go off the record if</p> <p>13 you want.</p> <p>14 MR. DAVIS: Let's go off record.</p> <p>15 THE VIDEOGRAPHER: Going off the record at</p> <p>16 11:15.</p> <p>17 (Whereupon a discussion was had</p> <p>18 off the record.)</p> <p>19 THE VIDEOGRAPHER: Going back on the record</p> <p>20 at 11:16.</p> <p>21 BY MR. DAVIS:</p> <p>22 Q. Are you familiar with the article by Gerald</p> <p>23 Scully, "Player Salary Share and the Distribution of</p> <p>24 Player Earnings," 25: Managerial and Decision</p> <p>25 Economics, page 77 is the first page, 2004?</p>	<p style="text-align: right;">104</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 that.</p> <p>3 Q. If you need a few -- if you need a bit of</p> <p>4 time just to make sure that it's -- recall, all I'm</p> <p>5 asking you is whether he's using wage shares.</p> <p>6 (Witness reviewing document.)</p> <p>7 BY THE WITNESS:</p> <p>8 A. Okay. I would -- yep.</p> <p>9 Q. Does he appear to be using wage shares in</p> <p>10 his analysis?</p> <p>11 A. I believe that's what he's doing.</p> <p>12 Q. Okay. And without reviewing the paper any</p> <p>13 further, are you aware that Professor Scully</p> <p>14 analyzed compensation as a share of revenue for</p> <p>15 Major League Baseball, the National Basketball</p> <p>16 Association, the National Football League, and the</p> <p>17 National Hockey League to assess monopsony power?</p> <p>18 A. I was not aware of that.</p> <p>19 Q. Okay. Where in your report, if at all, do</p> <p>20 you discuss Dr. Scully's article?</p> <p>21 A. I do not discuss Dr. Scully's article.</p> <p>22 MR. DAVIS: Let's mark the next document as</p> <p>23 Exhibit 5.</p> <p>24 (Oyer Exhibit 5 was marked as</p> <p>25 requested.)</p>
<p style="text-align: right;">103</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 MR. DAVIS: We're going to mark this as</p> <p>4 Exhibit No. 4, I believe.</p> <p>5 (Oyer Exhibit 4 was marked as</p> <p>6 requested.)</p> <p>7 BY MR. DAVIS:</p> <p>8 Q. Okay. If you could turn to page 78. This</p> <p>9 is, as I just indicated, an article by Gerald W.</p> <p>10 Scully, "Player Salary Share and the Distribution of</p> <p>11 Player Earnings," 25: Managerial and Decision</p> <p>12 Economics, 77, year 2004; and on page 78, do you see</p> <p>13 in the bottom of the left column table 1?</p> <p>14 A. Yes.</p> <p>15 Q. And do you see where it says "Player</p> <p>16 compensation as a share of revenue in profession</p> <p>17 team sports"?</p> <p>18 A. Yes.</p> <p>19 Q. Is it fair to say that Professor Scully is</p> <p>20 analyzing professional athlete compensation using</p> <p>21 what we have called wage shares?</p> <p>22 MR. WIDNELL: Objection, form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I mean, do you want me to -- I'm going to</p> <p>25 need some time to look this over and agree with</p>	<p style="text-align: right;">105</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. DAVIS:</p> <p>3 Q. Are you familiar with the article by</p> <p>4 Lawrence M. Kahn, "The Sports Business as a Labor</p> <p>5 Market Laboratory," 14: Journal of Economic</p> <p>6 Perspectives, 2000?</p> <p>7 A. I am not familiar with this article.</p> <p>8 Q. And that is the article that I just marked</p> <p>9 as Exhibit 5. Okay. Please turn to page 81. If</p> <p>10 you turn to the last sentence of the first full</p> <p>11 paragraph, the second paragraph but the first full</p> <p>12 paragraph. He says "Moreover, baseball salaries as</p> <p>13 a percentage of team revenues rose from 17.6 percent</p> <p>14 in 1974 to 20.5 percent in 1977 to 41.1 percent in</p> <p>15 1982 further suggesting that free agency has had a</p> <p>16 structural effect on baseball salary determination"</p> <p>17 and cites Zimbalist 1992; do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Okay. And then further down in the last</p> <p>20 paragraph, in the middle of the paragraph, again,</p> <p>21 beginning "Moreover," Professor Kahn writes</p> <p>22 "Moreover, salaries as a percent of revenues fell</p> <p>23 from about 40 percent in 1985 to 32 percent in 1989</p> <p>24 during the collusion period," again citing</p> <p>25 Zimbalist. "In 1989 arbitrators levied a</p>

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<p style="text-align: right;">106</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 200-million-dollar -- 280-million-dollar back-pay</p> <p>3 penalty on the owners to be paid out over the 1989</p> <p>4 to 1991 period as compensation for the losses</p> <p>5 imposed by collusion," citing Staudohar. Is that</p> <p>6 how it's pronounced, do you know?</p> <p>7 A. I've never heard of this person.</p> <p>8 Q. Okay. "And salaries as a percent of</p> <p>9 revenue bounced back to 43 percent by 1991," again</p> <p>10 citing Zimbalist. "The collusion episode provides a</p> <p>11 further illustration of the potential impact on</p> <p>12 monopsony on salaries."</p> <p>13 Am I correct that Professor Kahn is</p> <p>14 analyzing professional athlete compensation using</p> <p>15 wage shares?</p> <p>16 A. Professor Kahn is quoting a book written</p> <p>17 for a lay audience by Andrew Zimbalist in which he</p> <p>18 cites facts about labor share.</p> <p>19 Q. When you say "quoting," he's not actually</p> <p>20 quoting is he?</p> <p>21 A. My mistake. He is paraphrasing and citing</p> <p>22 facts stated in a book for a lay audience written by</p> <p>23 Andrew Zimbalist.</p> <p>24 Q. And is he relying on those underlying facts</p> <p>25 in his analysis?</p>	<p style="text-align: right;">108</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 (Witness reviewing document.)</p> <p>3 BY THE WITNESS:</p> <p>4 A. So what's the question?</p> <p>5 Q. The question is just whether Professor Kahn</p> <p>6 is analyzing professional athlete compensation using</p> <p>7 wage shares in these two paragraphs.</p> <p>8 A. Well, let's be clear about the conclusion</p> <p>9 he draws here. He says "The current episode</p> <p>10 provides a further illustration of the potential</p> <p>11 impact of monopsony on salaries."</p> <p>12 Q. That seems to be -- is that an answer to my</p> <p>13 question?</p> <p>14 A. Well, I just want to be clear about what</p> <p>15 we're -- so is that the analysis and conclusions</p> <p>16 we're talking about?</p> <p>17 Q. Yes.</p> <p>18 A. Okay. I mean, sure. He states some facts,</p> <p>19 and he says they're consistent with monopsony as a</p> <p>20 potential illustration of that.</p> <p>21 Q. And are those facts wage-share facts?</p> <p>22 A. Yes, they are.</p> <p>23 Q. Without further reviewing the paper, are</p> <p>24 you aware that Professor Kahn is analyzing the</p> <p>25 effects of anticompetitive conduct on player</p>
<p style="text-align: right;">107</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. I would have to read the paper to let you</p> <p>3 know.</p> <p>4 Q. Why don't you take a couple moments to read</p> <p>5 those two paragraphs to see if, in fact, he's</p> <p>6 relying on those facts as opposed to merely --</p> <p>7 MR. WIDNELL: I'm going to instruct you</p> <p>8 read the entire paper -- or review the entire paper</p> <p>9 to the extent that you feel there may be more</p> <p>10 information that could be relevant.</p> <p>11 MR. DAVIS: I suggest you read the</p> <p>12 paragraphs briefly, and then if you feel like</p> <p>13 there's more information that needs to be -- that</p> <p>14 you would need to answer that narrow question, then</p> <p>15 we can go from there.</p> <p>16 MR. WIDNELL: I think he should be entitled</p> <p>17 to see the entire document, look through the entire</p> <p>18 document at least before he makes some sort of</p> <p>19 conclusion about what --</p> <p>20 MR. DAVIS: I haven't disputed that yet.</p> <p>21 MR. WIDNELL: Well, you're instructing him</p> <p>22 just to review two paragraphs rather than to</p> <p>23 consider the paper as a whole I think.</p> <p>24 MR. DAVIS: I'm asking him to see if he</p> <p>25 needs to read more to answer that narrow question.</p>	<p style="text-align: right;">109</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 compensation using wage shares?</p> <p>3 MR. WIDNELL: I'm going to object for</p> <p>4 completeness. I'm not sure how that -- it sounds</p> <p>5 like you're suggesting there's a conclusion about</p> <p>6 the entire paper by telling him not to consider the</p> <p>7 entire paper.</p> <p>8 MR. DAVIS: I'm asking if he's aware. If</p> <p>9 he's not aware without reading the paper, he could</p> <p>10 simply answer the question I'm not aware one way or</p> <p>11 the other.</p> <p>12 BY THE WITNESS:</p> <p>13 A. So what's the question?</p> <p>14 Q. The question is, are you aware that in</p> <p>15 particular Professor Kahn is analyzing the effects</p> <p>16 of anticompetitive conduct on player compensation</p> <p>17 using wage shares?</p> <p>18 A. Among other -- he is using wage share among</p> <p>19 other means of -- among other methods and measures,</p> <p>20 sure.</p> <p>21 Q. Okay. And are you aware that Professor</p> <p>22 Kahn is analyzing wage shares for Major League</p> <p>23 Baseball to assess monopsony power?</p> <p>24 A. I -- now I think you've made it too strong.</p> <p>25 I mean, it's an illustration of potential impact.</p>

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<p style="text-align: right;">110</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. Where in your report do you discuss</p> <p>3 Dr. Kahn's article?</p> <p>4 A. I don't discuss Dr. Kahn's article.</p> <p>5 Q. The next document should be -- is</p> <p>6 Exhibit 6. Are you familiar with the article by</p> <p>7 John Vrooman, "Theory of the Perfect Game:</p> <p>8 Competitive Balance -- excuse me -- Competitive</p> <p>9 Balance in Monopoly Sports Leagues," 34: Review of</p> <p>10 Industrial Organization beginning on page 52009?</p> <p>11 A. Not that I know of.</p> <p>12 MR. DAVIS: Could you please mark this as</p> <p>13 Exhibit 6.</p> <p>14 (Oyer Exhibit 6 was marked as</p> <p>15 requested.)</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. The very first page is page 5 and that has</p> <p>18 the abstract. In the middle of the abstract he says</p> <p>19 "Evidence of the sportsman effect is provided by</p> <p>20 erosion of monopsonistic exploitation in the four</p> <p>21 major American sports leagues where players now</p> <p>22 share about 60 percent of revenue." Am I correct</p> <p>23 that Professor Vrooman in that sentence is analyzing</p> <p>24 professional athlete compensation using wage shares?</p> <p>25 A. I don't know what -- what is the sportsman</p>	<p style="text-align: right;">112</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. Didn't I already answer that question?</p> <p>3 Q. Not for this article.</p> <p>4 A. You asked me if I was aware of this article</p> <p>5 before.</p> <p>6 Q. That probably is a logical corollary</p> <p>7 that --</p> <p>8 A. I was not aware of this article until you</p> <p>9 showed it to me.</p> <p>10 Q. Okay. So of course, you were not aware</p> <p>11 that Professor Vrooman analyzes wage share for the</p> <p>12 four major sports to assess monopsony power; is that</p> <p>13 correct?</p> <p>14 MR. WIDNELL: So you're not asking him</p> <p>15 whether or not he believes that's what he does.</p> <p>16 You're stating that's your belief about what he</p> <p>17 does, and you're asking if he's aware of that -- of</p> <p>18 whether or not that's the case; is that right?</p> <p>19 MR. DAVIS: Yes.</p> <p>20 MR. WIDNELL: Okay. Got it.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I was not aware of this article until you</p> <p>23 showed it to me. I'm going to leave it at that.</p> <p>24 Q. So you're not aware one way or another of</p> <p>25 any use that Professor Vrooman puts wage share to,</p>
<p style="text-align: right;">111</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 effect?</p> <p>3 Q. It's actually explained two sentences just</p> <p>4 above in the abstract.</p> <p>5 (Witness reviewing document.)</p> <p>6 BY THE WITNESS:</p> <p>7 A. Okay. So I'm sorry. The question again?</p> <p>8 Q. My question is just a very narrow one.</p> <p>9 Where he says in the third sentence -- he's talking</p> <p>10 about the erosion of monopsonistic exploitation in</p> <p>11 the four major sports leagues and says where players</p> <p>12 now share about 60 percent of revenues. My question</p> <p>13 is just that. When he speaks of 60 percent of the</p> <p>14 revenues in those leagues as what the players</p> <p>15 receive, is he using wage share as we've defined</p> <p>16 it?</p> <p>17 A. I think so.</p> <p>18 Q. Okay.</p> <p>19 Are you aware just as you sit here without</p> <p>20 reviewing the article, that Professor Vrooman</p> <p>21 analyzed compensation as a share of revenue in the</p> <p>22 NFL, Major League Baseball, NBA, and NHL to assess</p> <p>23 monopsony power?</p> <p>24 MR. WIDNELL: Objection, form.</p> <p>25 BY THE WITNESS:</p>	<p style="text-align: right;">113</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 including assessing monopsony power?</p> <p>3 A. That's right.</p> <p>4 Q. Okay. Where in your report did you discuss</p> <p>5 Dr. Vrooman's article?</p> <p>6 A. I do not discuss Dr. Vrooman's article.</p> <p>7 Q. Are you familiar with an article by John</p> <p>8 Twomey and James Monks with the title "Monopsony and</p> <p>9 Salary Suppression: The Case of Major League Soccer</p> <p>10 in the United States," 56: The American Economist,</p> <p>11 pages 20 to 28, and the year is 2011?</p> <p>12 A. No.</p> <p>13 MR. DAVIS: Let's mark this as Exhibit 7,</p> <p>14 which is the article I just described.</p> <p>15 (Oyer Exhibit 7 was marked as</p> <p>16 requested.)</p> <p>17 BY MR. DAVIS:</p> <p>18 Q. If you could turn to page 20, and in the</p> <p>19 abstract starting with the third sentence discussing</p> <p>20 the monopsonistic structure of Major League Soccer,</p> <p>21 the authors write "This monopsonistic structure was</p> <p>22 designed to eliminate competition for players across</p> <p>23 teams within the league and thus allow the league to</p> <p>24 suppress player salaries. This paper investigates</p> <p>25 how effective the MLS has been in achieving this</p>

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<p style="text-align: right;">114</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 goal and finds that the MLS devotes only about 25</p> <p>3 percent of its revenues to player salaries compared</p> <p>4 to 50 to 60 percent in most other U.S. professional</p> <p>5 sports and professional soccer leagues abroad."</p> <p>6 My question is am I correct that Professors</p> <p>7 Twomey and Monks are using wage share to analyze</p> <p>8 athlete compensation?</p> <p>9 A. It would appear so.</p> <p>10 Q. Okay. And are you aware that Professors</p> <p>11 Twomey and Monks analyzed wage share for MLS to</p> <p>12 assess monopsony power?</p> <p>13 A. Until you showed me this article, I had</p> <p>14 never heard of John Twomey, James Monks, or The</p> <p>15 American Economist.</p> <p>16 Q. Is it fair to say that you are -- that</p> <p>17 means you're unaware that they analyze wage share</p> <p>18 for MLS to assess monopsony power?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. And where in your report do you</p> <p>21 discuss this Twomey and Monks article?</p> <p>22 A. I don't.</p> <p>23 Q. Are you familiar with a paper by James</p> <p>24 Monk -- Monks, "Revenue Shares and Monopsonistic</p> <p>25 Behavior in Intercollegiate Athletics"? It's dated</p>	<p style="text-align: right;">116</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Looking at that, am I correct that</p> <p>3 Professor Monks is using wage share to analyze</p> <p>4 college athlete compensation?</p> <p>5 A. I would guess so based on this.</p> <p>6 Q. Based on that. Okay. And are you aware</p> <p>7 that Professor Monks analyzes wage share for college</p> <p>8 athletes to assess monopsony power?</p> <p>9 A. Well, you've just made me aware of it.</p> <p>10 Q. Okay. So you're now aware of it?</p> <p>11 A. That's right.</p> <p>12 Q. Where in your report do you discuss this</p> <p>13 paper by Monks?</p> <p>14 A. This unpublished working paper that I've</p> <p>15 never heard of and that leaps to a grand conclusion</p> <p>16 in the last line of the abstract that seems</p> <p>17 completely unwarranted, I don't refer to it.</p> <p>18 Q. Have you read the whole paper?</p> <p>19 A. I have not.</p> <p>20 Q. So do you know whether the contents of the</p> <p>21 paper justify the --</p> <p>22 A. Yeah. I mean, I can --</p> <p>23 Q. -- conclusion?</p> <p>24 A. The reason I say that in his abstract he</p> <p>25 says "Clearly," which leads me to think he's saying</p>
<p style="text-align: right;">115</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 on the paper itself September 2013.</p> <p>3 A. No.</p> <p>4 MR. DAVIS: Please mark this as Exhibit 8.</p> <p>5 (Oyer Exhibit 8 was marked as</p> <p>6 requested.)</p> <p>7 BY MR. DAVIS:</p> <p>8 Q. The paper I just described is Exhibit 8.</p> <p>9 Please turn to the first page after the title page</p> <p>10 where there's an abstract. In the last two</p> <p>11 sentences he writes, comparing the four major</p> <p>12 sports -- baseball, basketball, football and</p> <p>13 hockey -- to NCAA athletics, that whereas the major</p> <p>14 sports have negotiated aggregate salaries that</p> <p>15 represent over 50 percent of league-wide revenues,</p> <p>16 he then says "In comparison analyzing data from the</p> <p>17 post -- from the Office of Post-Secondary Education,</p> <p>18 OPE, of the Department of Education on 2,068</p> <p>19 institutions of higher education reveals that</p> <p>20 intercollegiate athletes receive payments in kind</p> <p>21 via athletic scholarships that constitute less than</p> <p>22 22 percent of total athletic department revenues.</p> <p>23 Clearly the monopsonistic practices of the NCAA are</p> <p>24 effective in restricting the compensation of</p> <p>25 athletes."</p>	<p style="text-align: right;">117</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 clearly based on what he's presented in the abstract</p> <p>3 that he can draw that conclusion, and I don't think</p> <p>4 that's valid.</p> <p>5 Q. Okay. But based only on the abstract?</p> <p>6 A. Agreed.</p> <p>7 Q. Okay.</p> <p>8 Let's look back at Exhibit 1. Can you find</p> <p>9 that? So Exhibit 1 you'll recall is the textbook on</p> <p>10 microeconomics, Robert S. Pindyck and Daniel</p> <p>11 Rubinfeld, Microeconomics. The particular version</p> <p>12 is 9th edition, 200- -- it's labeled 2018, but that</p> <p>13 seems premature.</p> <p>14 If you look at pages 540 and 541, there's</p> <p>15 an example 14.4, and the heading, do you see where</p> <p>16 it says "Monopsony Power in the Market for Baseball</p> <p>17 Players"?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Okay. And then if you turn to page 541,</p> <p>20 the paragraph that spills over from the bottom of</p> <p>21 this insert left column to the right column, it</p> <p>22 begins "The result was an interesting experiment in</p> <p>23 labor market economics. Between 1975 and 1980 the</p> <p>24 market for baseball players adjusted to a new post</p> <p>25 reserve clause equilibrium. Before 1975</p>

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<p style="text-align: right;">118</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 expenditures on player's contracts made up</p> <p>3 approximately 25 percent of all team expenditures.</p> <p>4 By 1980 those expenditures had increased to 40</p> <p>5 percent."</p> <p>6 In those last two sentences where the</p> <p>7 authors are describing compensation to players as a</p> <p>8 percentage of all team expenditures, would you</p> <p>9 characterize that as a wage-share analysis?</p> <p>10 A. It's interesting you chose those two</p> <p>11 sentences instead of anything else in this box; but</p> <p>12 yes, I would characterize those that way.</p> <p>13 Q. You would characterize those that way.</p> <p>14 Okay. And where in your report do you discuss this</p> <p>15 portion of the Pindyck and Rubinfeld book?</p> <p>16 A. I don't discuss the Pindyck and Rubinfeld</p> <p>17 book. I think it's fair to note for the record that</p> <p>18 you've shown me a 2018 book and asked me where I</p> <p>19 reference it. It would be hard for me to reference</p> <p>20 a book that's not yet available.</p> <p>21 Q. It is available, actually, to be clear.</p> <p>22 A. We don't know that that was true when I</p> <p>23 wrote my report.</p> <p>24 Q. If that insert was in the previous edition,</p> <p>25 then do you think it would have been possible for</p>	<p style="text-align: right;">120</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 page -- on paragraph 22.</p> <p>3 A. Okay.</p> <p>4 Q. So is it correct that you discuss his book,</p> <p>5 the one I identified, Monopsony In Motion, and</p> <p>6 suggest it does not contain analyses using wage</p> <p>7 share?</p> <p>8 A. That's right.</p> <p>9 Q. Are you suggesting that Dr. Manning</p> <p>10 explicitly rejects wage share concluding it is an</p> <p>11 inappropriate basis for analyzing compensation in</p> <p>12 labor markets?</p> <p>13 A. I have no recollection of him doing that.</p> <p>14 Q. Okay. And there's nowhere in your report</p> <p>15 that you're aware of where you cite him explicitly</p> <p>16 rejecting wage share for analyzing compensation in</p> <p>17 labor markets?</p> <p>18 A. That's right.</p> <p>19 Q. Okay. Are you aware that there are</p> <p>20 numerous other books on monopsony power including in</p> <p>21 labor markets?</p> <p>22 A. I -- there must --</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. Am I aware that there are other books on</p>
<p style="text-align: right;">119</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 you to have reviewed it in drafting your report?</p> <p>3 A. Then I can't -- anyway, no, because I</p> <p>4 didn't review that book, to be honest.</p> <p>5 Q. Fair enough.</p> <p>6 Turning back to Exhibit 2, this is your</p> <p>7 report. Do you have that before you?</p> <p>8 A. I do.</p> <p>9 Q. Okay. In your report you discuss a</p> <p>10 particular book on monopsony power in the labor</p> <p>11 markets, Alan Manning, Monopsony In Motion --</p> <p>12 THE REPORTER: I'm sorry.</p> <p>13 MR. DAVIS: I'm sorry. Yes. Should I</p> <p>14 start from the beginning of that sentence?</p> <p>15 THE REPORTER: No. After labor markets.</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Alan Manning, M-A-N-N-I-N-G, Alan is</p> <p>18 A-L-A-N, Monopsony In Motion, and suggests it does</p> <p>19 not contain analysis -- analyses using wage share;</p> <p>20 is that correct?</p> <p>21 A. Where are you pointing me to?</p> <p>22 Q. Pages --</p> <p>23 A. It's consistent --</p> <p>24 Q. -- 6 and 7 of your report. I think you</p> <p>25 begin the discussion of Professor Manning's work on</p>	<p style="text-align: right;">121</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 monopsony in labor markets?</p> <p>3 Q. Yes.</p> <p>4 A. There are books on everything.</p> <p>5 Q. Okay.</p> <p>6 A. So I -- I can't say that I'm aware of other</p> <p>7 books on monopsony in labor markets. I can tell you</p> <p>8 that I certainly would expect there are many other</p> <p>9 books on monopsony in labor markets.</p> <p>10 Q. Okay. Well, is there some reason you focus</p> <p>11 on Dr. Manning's books -- book as opposed to the</p> <p>12 others?</p> <p>13 A. Yes. It's a well-known, well-cited, highly</p> <p>14 regarded book among labor economists.</p> <p>15 Q. Is it possible that there are other books</p> <p>16 on monopsony power in labor markets that are</p> <p>17 similarly well known and similarly broadly cited?</p> <p>18 A. Is it possible? I guess. I mean,</p> <p>19 anything's possible, right? I have not done a</p> <p>20 thorough search of all books on monopsony in the</p> <p>21 labor market.</p> <p>22 Q. As a labor economist would you likely be</p> <p>23 familiar with this particular literature?</p> <p>24 A. Sure. I mean, yes and no. I'm familiar</p> <p>25 with this literature. Books are a different story.</p>

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<p style="text-align: right;">122</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 This was written for -- the main goal of this book</p> <p>3 is not really to sell to other academic economists.</p> <p>4 It's to sell to students and lay people interested</p> <p>5 in the topic.</p> <p>6 Q. Well, so then would economists find</p> <p>7 Professor Manning's book and his opinions</p> <p>8 authoritative?</p> <p>9 A. Sure.</p> <p>10 Q. Oh, they would?</p> <p>11 A. Yeah.</p> <p>12 Q. Do you think this is a particularly</p> <p>13 authoritative source on labor markets and monopsony</p> <p>14 power?</p> <p>15 MR. WIDNELL: Objection, form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Alan Manning is a recognized expert and</p> <p>18 leader in the thinking of monopsony -- analysis of</p> <p>19 monopsony in labor markets. So his book and his</p> <p>20 handbook chapter are authoritative sources among</p> <p>21 labor economists.</p> <p>22 Q. So it's more that you would say Professor</p> <p>23 Manning is particularly authoritative, or I guess</p> <p>24 you could say both, he and his book?</p> <p>25 MR. WIDNELL: Objection, form.</p>	<p style="text-align: right;">124</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 effects of monopsony power?</p> <p>3 A. I don't think I cite to that.</p> <p>4 Q. Where in your report do you cite to any</p> <p>5 publication that says it is inappropriate for a</p> <p>6 labor economist to use wage share in determining the</p> <p>7 marginal product of labor of a worker?</p> <p>8 A. I don't. There would be no reason to say</p> <p>9 that.</p> <p>10 Q. Okay. Where in your report do you cite to</p> <p>11 any publications that use wage level as a measure of</p> <p>12 the marginal product of labor of professional</p> <p>13 athletes?</p> <p>14 A. That use wage level as a measure of -- so</p> <p>15 can you -- I'm sorry. I need that one again.</p> <p>16 Q. Sure. Where in your report do you cite to</p> <p>17 any publications that use wage level as a measure of</p> <p>18 the marginal product of labor of professional</p> <p>19 athletes?</p> <p>20 A. I have to think about that one. I don't</p> <p>21 think I do.</p> <p>22 Q. Where in your report do you cite to any</p> <p>23 publications that measure the marginal product of</p> <p>24 labor of professional athletes at all?</p> <p>25 A. I don't that I can recall.</p>
<p style="text-align: right;">123</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 BY THE WITNESS:</p> <p>3 A. So is there a question?</p> <p>4 Q. Yeah. Are you saying that both Professor</p> <p>5 Manning and his book are particularly authoritative?</p> <p>6 A. Yes.</p> <p>7 Q. Where in your report do you cite to any</p> <p>8 publications that say it is inappropriate for a</p> <p>9 labor economist to use wage share in conducting</p> <p>10 microeconomic analysis?</p> <p>11 A. I don't remember citing to that.</p> <p>12 Q. Where in your report do you cite to any</p> <p>13 publications that say it is inappropriate for a</p> <p>14 labor economist to use wage share in assessing the</p> <p>15 effects of monopsony power?</p> <p>16 A. Is that different from the last question?</p> <p>17 Q. The last question was about conducting</p> <p>18 microeconomic analysis, and this second question was</p> <p>19 more specifically addressing assessing the effects</p> <p>20 of monopsony power. Should I read it back to you</p> <p>21 just to be clear?</p> <p>22 A. That would be great.</p> <p>23 Q. Where in your report do you cite to any</p> <p>24 publications that say it is inappropriate for a</p> <p>25 labor economist to use wage share in assessing the</p>	<p style="text-align: right;">125</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Where in your report do you cite to any</p> <p>3 publications that assess the effects of monopsony</p> <p>4 power on the compensation of professional athletes?</p> <p>5 A. Sorry. Can you read that back?</p> <p>6 Q. Where in your report do you cite to any</p> <p>7 publications that assess the effects of monopsony</p> <p>8 power on the compensation of professional athletes?</p> <p>9 A. And we're not counting the other expert</p> <p>10 reports as relevant publications on which I comment?</p> <p>11 Q. You didn't cite to them or rely on them,</p> <p>12 you said.</p> <p>13 A. The Singer report and the --</p> <p>14 Q. Oh, the Singer -- oh, I misunderstood.</p> <p>15 A. -- and the Zimbalist report?</p> <p>16 Q. Oh, so the Singer report and the Zimbalist</p> <p>17 report.</p> <p>18 A. We're not counting those as whatever --</p> <p>19 however -- whatever you termed it. Studies?</p> <p>20 Q. I had said publications.</p> <p>21 A. Okay. But other than those, no.</p> <p>22 Q. We were talking over each over and, again,</p> <p>23 I'm as much at fault at least as you.</p> <p>24 A. Sorry.</p> <p>25 Q. Just to clarify, you did not cite to any</p>

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<p style="text-align: right;">126</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 publications that assess the effects of monopsony</p> <p>3 power on the compensation of professional athletes</p> <p>4 with the possible exception of the Singer and</p> <p>5 Zimbalist reports that you reviewed in this case?</p> <p>6 A. That's correct.</p> <p>7 Q. What publications have you written that</p> <p>8 measure the marginal product of labor of</p> <p>9 professional athletes?</p> <p>10 A. I have not written a publication that does</p> <p>11 that.</p> <p>12 Q. What publications have you written that</p> <p>13 assess the effect of monopsony power on the</p> <p>14 compensation of professional athletes?</p> <p>15 A. I have not written a paper on that.</p> <p>16 Q. I think I'm just reaffirming what we've</p> <p>17 already established, but it sets a predicate for my</p> <p>18 next question. So let me just confirm. Your view</p> <p>19 is that wage share is not an appropriate way to</p> <p>20 evaluate worker compensation or to benchmark</p> <p>21 competition in competitive labor markets; is that</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Do you think that's a standard view for</p> <p>25 economists?</p>	<p style="text-align: right;">128</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 guess that he would share that view.</p> <p>3 MR. DAVIS: I am at a good breaking point.</p> <p>4 On the other hand, I could go forward. What do</p> <p>5 folks prefer?</p> <p>6 MR. WIDNELL: Is lunch here?</p> <p>7 MR. NAKAMURA: Lunch is here.</p> <p>8 MR. DAVIS: Shall we take a break? Okay.</p> <p>9 Let's go off the record.</p> <p>10 THE VIDEOGRAPHER: Going off the record at</p> <p>11 11:51.</p> <p>12 (Whereupon, at 11:51 a.m., the</p> <p>13 deposition was recessed, to</p> <p>14 reconvene at 12:35 p.m., this</p> <p>15 same day.)</p>
<p style="text-align: right;">127</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. For labor economists I believe that would</p> <p>3 be a standard view.</p> <p>4 Q. Do you think other economists would share</p> <p>5 your view, other labor economists would share your</p> <p>6 view?</p> <p>7 A. I do.</p> <p>8 Q. Do you think, for example, David Autor,</p> <p>9 A-U-T-O-R, whom you cite, would share that view?</p> <p>10 A. I do.</p> <p>11 Q. How about Barry Hirsh or Edward Shumacher?</p> <p>12 A. I do.</p> <p>13 Q. You think they would share that view too?</p> <p>14 A. I do.</p> <p>15 Q. Alan Manning, do you think he would share</p> <p>16 that view?</p> <p>17 A. I do.</p> <p>18 Q. Edward Leamer, do you think he would share</p> <p>19 that view?</p> <p>20 A. Edward Leamer is not a labor economist.</p> <p>21 He's a very good economist. Based on the very</p> <p>22 redacted version of his expert report in high-tech</p> <p>23 workers, I would guess he would share that view.</p> <p>24 Q. Okay. What about Suresh Naidu?</p> <p>25 A. I would assume he would share -- I would</p>	<p style="text-align: right;">129</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 AFTERNOON SESSION</p> <p>3 (12:41 p.m.)</p> <p>4 THE VIDEOGRAPHER: We are going back on the</p> <p>5 record at 12:41. This begins disk No. 4.</p> <p>6 PAUL OYER,</p> <p>7 the witness at the time of recess, having been</p> <p>8 previously duly sworn, was further examined and</p> <p>9 testified as follows:</p> <p>10 EXAMINATION</p> <p>11 (Resumed)</p> <p>12 (Oyer Exhibit 9 was marked as</p> <p>13 requested.)</p> <p>14 BY MR. DAVIS:</p> <p>15 Q. Okay. I'd like to introduce Exhibit No. 9,</p> <p>16 I think is the next one. Yes. It should be Kevin</p> <p>17 Murphy and Paul Oyer, "Discretion in Executive</p> <p>18 Incentive Contracts, Theory and Evidence," a draft</p> <p>19 marked June 2001. Do you recognize this document?</p> <p>20 A. I have much less fond memories of this one;</p> <p>21 but yes, I do.</p> <p>22 Q. Okay. What is it?</p> <p>23 A. It's a paper -- it's a working paper</p> <p>24 version of a paper I wrote many years ago.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">166</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 other?</p> <p>3 A. I don't remember.</p> <p>4 Q. Do you know when this litigation was</p> <p>5 initiated?</p> <p>6 A. The exact date, no.</p> <p>7 Q. Do you know whether it was before 2016?</p> <p>8 A. It was before 2016, if I remember</p> <p>9 correctly.</p> <p>10 Q. Do you know whether it was before 2015?</p> <p>11 A. I don't. That sounds about when it really</p> <p>12 got going, but I don't know.</p> <p>13 Q. Do you know whether it began before 2014?</p> <p>14 A. I don't.</p> <p>15 Q. Let's say you wanted to test</p> <p>16 econometrically whether foreclosure share as</p> <p>17 Dr. Singer defines it has a relationship with</p> <p>18 fighter share and event revenue. Okay. As an</p> <p>19 econometrician would you just look at tables 4 and 5</p> <p>20 and give your intuitive reaction?</p> <p>21 A. So can you read the first clause of your</p> <p>22 statement -- of your question back to me?</p> <p>23 Q. As an econometrician would you --</p> <p>24 A. Okay. Keep going.</p> <p>25 Q. Earlier?</p>	<p style="text-align: right;">168</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 that approach. You've made that clear.</p> <p>3 A. Okay. Sure.</p> <p>4 Q. Let's say you wanted to test it</p> <p>5 econometrically, right. Would you just look at</p> <p>6 tables 4 and 5 and give your intuitive reaction?</p> <p>7 A. Is that how I would test it</p> <p>8 econometrically?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. No. Would you estimate a multiple</p> <p>12 regression analysis?</p> <p>13 A. Yes.</p> <p>14 Q. On page 17 in the three paragraphs you</p> <p>15 identified when we were talking about your</p> <p>16 evidentiary basis for drawing a distinction between</p> <p>17 the UFC and other sports I believe you provide three</p> <p>18 reasons why the UFC might pay a lower share of its</p> <p>19 revenues to its athletes than those other sports; is</p> <p>20 that fair to say?</p> <p>21 A. I don't remember. I'm going to have to</p> <p>22 look through it if you want me to agree to that.</p> <p>23 Q. Let's -- we're going to take a little time</p> <p>24 and you should -- you should feel free to look</p> <p>25 through it.</p>
<p style="text-align: right;">167</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. As an econometrician would you look at</p> <p>4 tables 4 and 5 and give your intuitive reaction?</p> <p>5 MR. WIDNELL: Objection --</p> <p>6 BY THE WITNESS:</p> <p>7 A. Earlier.</p> <p>8 MR. WIDNELL: This is a slightly different</p> <p>9 question.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Earlier.</p> <p>12 THE REPORTER: One at a time, please.</p> <p>13 MR. WIDNELL: Objection to the question.</p> <p>14 That was a slightly different question than you</p> <p>15 asked earlier.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Can you start at the beginning?</p> <p>18 Q. Let's say you wanted to test</p> <p>19 econometrically whether foreclosure share as</p> <p>20 Dr. Singer defines it has a relationship with</p> <p>21 fighter share and event revenue.</p> <p>22 A. I don't want to test that.</p> <p>23 Q. Hypothetically if you did.</p> <p>24 A. Why would I do that?</p> <p>25 Q. Let's say -- I understand that you reject</p>	<p style="text-align: right;">169</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 (Witness reviewing document.)</p> <p>3 BY THE WITNESS:</p> <p>4 A. Okay.</p> <p>5 Q. So the question was kind of broad-brush.</p> <p>6 Are there three reasons you suggest for</p> <p>7 distinguishing these various other sports from the</p> <p>8 UFC?</p> <p>9 A. I mean, I would -- you're equating each of</p> <p>10 those reasons to one paragraph each?</p> <p>11 Q. Yes.</p> <p>12 A. I would argue paragraph 56 has more than</p> <p>13 one reason in it.</p> <p>14 Q. Three categories of reasons?</p> <p>15 A. Sure.</p> <p>16 Q. I'm just trying to set up a conversation</p> <p>17 where we're talking about the same thing. Is there</p> <p>18 a label we can use for those other sports so that it</p> <p>19 will be a little bit less clumsy? For example --</p> <p>20 the sports I believe are boxing, baseball, football,</p> <p>21 hockey, and basketball; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Can we call them the major sports for this</p> <p>24 limited purpose?</p> <p>25 A. Why don't we call them the Zimbalist</p>

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<p style="text-align: right;">170</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 sports.</p> <p>3 Q. That's a bit of a mouthful. I guess, sure,</p> <p>4 if you prefer the Zimbalist sports. It doesn't trip</p> <p>5 off the tongue like major sports.</p> <p>6 A. Okay. We'll call them the major sports if</p> <p>7 it means a lot to you.</p> <p>8 Q. The major sports. Thank you. All right.</p> <p>9 So I'm going to just give a very short</p> <p>10 description of each category of reason to make sure</p> <p>11 that we are on the same page, and then we can talk</p> <p>12 more about each of those perhaps in depth.</p> <p>13 In paragraph 56 you offer what might be</p> <p>14 labeled the nascent business explanation, and that</p> <p>15 says generally that nascent businesses often face</p> <p>16 different cost and revenue structures than</p> <p>17 established businesses with nascent sports leagues</p> <p>18 possibly paying lower revenue share than established</p> <p>19 sports leagues. Is that a fair summary?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And then in paragraph 57 you offer</p> <p>22 what I -- what we might call the substitutability</p> <p>23 explanation, that marginal fighters may be better</p> <p>24 substitutes for top fighters compared to marginal</p> <p>25 athletes in the major sports. Is that a fair</p>	<p style="text-align: right;">172</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 litigation?</p> <p>3 A. They're the ones that are in my report.</p> <p>4 Q. Let's start with the nascent business</p> <p>5 explanation. Is it your opinion that, all else</p> <p>6 equal, if a league is earlier in its development it</p> <p>7 would be expected to pay a lower share of its</p> <p>8 revenue to its fighters than it would pay as it</p> <p>9 matures?</p> <p>10 A. Not necessarily.</p> <p>11 Q. Not necessarily. So it's possible that you</p> <p>12 have it exactly backwards, that nascent sports</p> <p>13 businesses pay a higher share of revenue so that the</p> <p>14 major sports are a conservative benchmark in this</p> <p>15 regard?</p> <p>16 A. That's empirically not true, right. So I</p> <p>17 don't think that -- I don't think I have it exactly</p> <p>18 backwards like as a general rule or something. I</p> <p>19 don't think we know the general rule. I think that</p> <p>20 we can't make a comparison about how things get done</p> <p>21 in a nascent sport versus a not nascent sport, for</p> <p>22 lack of a better way of saying it.</p> <p>23 Q. So you have no idea one way or the other,</p> <p>24 though?</p> <p>25 MR. WIDNELL: Objection, form.</p>
<p style="text-align: right;">171</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 summary?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And then in paragraph 58 you offer</p> <p>5 the scale of revenue explanation, which broad-brush</p> <p>6 is that the scale of revenue may explain the</p> <p>7 difference such that leagues with greater -- greater</p> <p>8 revenue may pay a higher share of their revenue to</p> <p>9 athletes than leagues with lesser revenue. Is that</p> <p>10 a fair broad-brush description?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So just to summarize, we have the</p> <p>13 nascent business explanation, the substituted --</p> <p>14 substitutability explanation, and the scale of</p> <p>15 revenue explanation. Are you aware of any other</p> <p>16 reasons why the UFC might pay a lower share of</p> <p>17 revenue to its athletes than the major sports?</p> <p>18 A. I mean, I guess there are other differences</p> <p>19 that could affect the shares of revenue one way or</p> <p>20 the other. I haven't thought off the top of my head</p> <p>21 about whether it would -- which way -- which way it</p> <p>22 would fall.</p> <p>23 Q. Okay. So these are the only ones that</p> <p>24 you've analyzed in your report and that you are</p> <p>25 using -- that you're opining about in this</p>	<p style="text-align: right;">173</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 BY THE WITNESS:</p> <p>3 A. I have no idea one way or the other about</p> <p>4 what?</p> <p>5 Q. You have no idea whether a nascent sport or</p> <p>6 a mature sport pays a higher revenue share or if, in</p> <p>7 fact, a nascent versus mature sport, that</p> <p>8 distinction doesn't matter at all?</p> <p>9 A. I wouldn't say I have no idea. I mean,</p> <p>10 we're looking at a bunch of nascent sports that have</p> <p>11 very low shares. You've shown me a bunch of papers</p> <p>12 that show that these other sports over time increase</p> <p>13 the share that went to the players.</p> <p>14 Q. Do you know whether that share increased</p> <p>15 because the sport matured or whether it increased</p> <p>16 because of the elimination of anticompetitive</p> <p>17 practices?</p> <p>18 A. I don't -- I mean, certainly my guess would</p> <p>19 be some of the latter, but I don't know about -- you</p> <p>20 know, would I guess some of the former too? Depends</p> <p>21 on the timing, of course.</p> <p>22 Q. Do you have any evidentiary basis in your</p> <p>23 report that the distinction between a nascent and a</p> <p>24 mature league actually matters for these purposes at</p> <p>25 all?</p>

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<p style="text-align: right;">174</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm sorry. Can you say that again?</p> <p>3 Q. Do you have any evidentiary basis in your</p> <p>4 report, do you cite any evidentiary basis in your</p> <p>5 report that the distinction between a nascent league</p> <p>6 and a mature league matters at all for purposes of</p> <p>7 wage share?</p> <p>8 A. I do exactly what Zimbalist does. I come</p> <p>9 up with a few examples that support exactly that</p> <p>10 hypothesis just as he comes up with a few examples</p> <p>11 that support his.</p> <p>12 Q. I don't think that's responsive to my</p> <p>13 question. So my question is whether there's any</p> <p>14 evidentiary basis in your support -- in your report.</p> <p>15 Is there?</p> <p>16 A. That's the same level of evidentiary basis</p> <p>17 as Zimbalist's report.</p> <p>18 Q. I understand the argument you're making.</p> <p>19 I'm asking you for a yes or no answer.</p> <p>20 A. I don't have a yes or no answer.</p> <p>21 Q. What is -- so what's the evidentiary --</p> <p>22 other than comparison to Zimbalist, where is the</p> <p>23 evidentiary basis in your report?</p> <p>24 A. Well, there's the discussion of the X</p> <p>25 games. Did I discuss any other nascent sports? I</p>	<p style="text-align: right;">176</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 pay a lower share of its revenues to its athletes</p> <p>3 than would a league -- would a league that contracts</p> <p>4 with higher-level fighters and more stars?</p> <p>5 A. I would never say that because you're</p> <p>6 asking me to speculate about a metric that I don't</p> <p>7 think is relevant. So do you want to ask --</p> <p>8 Q. So you had suggested that part of what</p> <p>9 might explain the difference in wage share was the</p> <p>10 substitutability of marginal athletes for top</p> <p>11 athletes. Are you now saying that that doesn't have</p> <p>12 any explanatory power in this context?</p> <p>13 A. No. What I say in my report is there are</p> <p>14 differences between the sports Zimbalist analyzes</p> <p>15 and MMA that lead the pay structures to be</p> <p>16 different, and as a result the particular metric he</p> <p>17 looks at might be affected by that.</p> <p>18 Q. And one of the potential difference is the</p> <p>19 relative substitutability of marginal athletes for</p> <p>20 top athletes?</p> <p>21 A. That's right.</p> <p>22 Q. Do you know in general whether major sports</p> <p>23 leagues -- the major sports leagues have relatively</p> <p>24 lower substitutability than the UFC?</p> <p>25 A. Well, in some sense you really can't</p>
<p style="text-align: right;">175</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 can't remember. There's the -- I guess the X games</p> <p>3 was the only example where I could find the actual</p> <p>4 revenue share. I mean, as you know, finding the</p> <p>5 revenue share is no easy task.</p> <p>6 Q. Okay. So it's -- the only evidentiary</p> <p>7 basis is the X games as an example. Okay.</p> <p>8 You had mentioned that you suspected that</p> <p>9 one of the reasons why wage share went up in the</p> <p>10 major sports was the elimination of certain</p> <p>11 anticompetitive practices. Why would the</p> <p>12 elimination of those anticompetitive practices</p> <p>13 potentially result in an increase in wage share?</p> <p>14 A. Because the outside options of the players</p> <p>15 were changed.</p> <p>16 Q. Just to clarify, so if an anticompetitive</p> <p>17 practice decreases the outside options for an</p> <p>18 athlete, one would then expect a league to pay lower</p> <p>19 compensation than it would in the competitive world;</p> <p>20 is that a fair summary?</p> <p>21 A. Yes.</p> <p>22 Q. In regard to the substitutability</p> <p>23 explanation, is it your opinion that, all else</p> <p>24 equal, if a league contracts only with lower-level</p> <p>25 athletes and fewer stars, it would be expected to</p>	<p style="text-align: right;">177</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 compare that -- you can't compare that actual</p> <p>3 substitutability because the pay of the marginal</p> <p>4 player in those other leagues is determined not</p> <p>5 actually by the marginal revenue of their labor, but</p> <p>6 by the collective bargaining agreement.</p> <p>7 Q. How does that relate to the relative</p> <p>8 substitutability?</p> <p>9 A. So in a relatively competitive labor market</p> <p>10 the firm is deciding do I hire this person or my</p> <p>11 next best option and that's what the Major Leagues</p> <p>12 are doing as well, but we can't look at the</p> <p>13 differences in pay across those groups and determine</p> <p>14 anything in the case of Major League Baseball, for</p> <p>15 example, because the pay of the marginal player is</p> <p>16 collectively bargained. It's not an outcome of free</p> <p>17 labor market.</p> <p>18 Q. Is it your opinion that marginal product of</p> <p>19 labor of the athletes doesn't figure in the pay in</p> <p>20 sports like baseball because of the collective</p> <p>21 bargaining agreement?</p> <p>22 A. No, that is not my opinion.</p> <p>23 Q. That is not your opinion. Okay.</p> <p>24 And is it your opinion that the collective</p> <p>25 bargaining agreement, let's say in Major League</p>

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